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No. 80-1694

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ATWOOD VACUUM MACHINE COMPANY, *Appellant*,

v.

FORD MOTOR COMPANY, *Appellee*.

On Appeal from the Supreme Court of Florida

APPELLEE'S MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

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Counterstatement of the Question Presented by the Appeal

Where the manufacturer of a component part sells its product to an automobile manufacturer, knowing that automobiles in which the component part is installed will be distributed and sold in Florida, where such an automobile is in fact sold in Florida, and where the component part causes injury in Florida, does due process preclude an action against the component part manufacturer in Florida?

Atwood's Appeal Raises No Substantial Federal Question And Should Be Dismissed; In The Alternative, The Decision of the Florida Court Was Clearly Correct And Should Be Summarily Affirmed.

The appellant in this case, Atwood Vacuum Machine Company, has never denied that it sells door hinge assemblies to Ford Motor Company for installation in Ford automobiles, and that automobiles containing the assemblies are distributed nationally by Ford. Indeed, as the Florida Supreme Court noted, Atwood has never denied that it knew that Ford vehicles containing assemblies would be shipped to Florida and sold in that state. Nevertheless, Atwood asks this Court to hold that the Federal Constitution, particularly the Fourteenth Amendment, forbids the state of Florida from exercising jurisdiction over Atwood merely because Atwood does not directly do business in Florida.

A consideration of the only case cited by Atwood, *World-Wide Volkswagen* v. *Woodson,* 444 U.S. 286 (1980), demonstrates the lack of substance to Atwood's argument. The defendant distributor in that case distributed vehicles to only three states, and the retail dealer sold vehicles only in New York. The fortuitous circumstances that one vehicle sold by these defendants happened to pass through Oklahoma was an isolated occurrence which was insufficient to permit the state of Oklahoma to exercise jurisdiction. In contrast, the fact that an automobile containing a part manufactured by Atwood was sold to an individual in Florida was no isolated occurrence or fortuitous circumstance. Rather, *it was the inevitable result of Atwood's decision to sell its product to a national corporation.*

That a manufacturer which intentionally, albeit indirectly, distributes its products to a state on a consistent basis could properly be subjected to the jurisdiction of that state was expressly recognized in *World-Wide Volkswagen:*

> "Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been a source of injury to its owner or to others. *The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.*" (444 U.S. at ——) (Emphasis supplied)

By selling its door hinge assemblies to Ford Motor Company for incorporation into vehicles which were intended for national distribution, Atwood clearly delivered its product into the stream of commerce with the expectation that it would be purchased by consumers in Florida, as well as in the various other states. The fact that the assemblies were first shipped to Ford in Michigan or elsewhere does not alter the fact that latches were intended for ultimate distribution throughout the country.

Atwood erroneously states, on page 5 of its jurisdictional statement, that Ford's argument is based solely on the fact that the presence of an Atwood assembly in Florida is "foreseeable." That is not the case. Indeed, the Florida Supreme Court did not rest

its decision on "foreseeability," but on the fact that Atwood elected to do business with Ford Motor Company, and manufactured, sold and delivered to Ford essential components to be incorporated in motor vehicles which Atwood *knew for a certainty* would be sold in the state of Florida. By these actions, Atwood, in effect, elected to do business in the state of Florida, and knowingly and intentionally subjected itself to potential liability in Florida if Florida residents were injured by defects in Atwood's products.

The Fifth Circuit Court of Appeals recently reached a similar conclusion in *Oswalt* v. *Scripto, Inc.*, 616 F.2d 191 (1980). In that case, a Japanese corporation, Tokai-Seiki, agreed that Scripto would have the exclusive right to distribute its cigarette lighters in the United States. Scripto purchased the lighters from Tokai-Seiki and placed them in commerce for sale in the United States. At least one Scripto customer had "national retail outlets."

Tokai-Seiki was ultimately sued in Texas for an injury which occurred in that state. The Fifth Circuit upheld the application of the Texas long-arm statute to Tokai-Seiki even though Tokai-Seiki had never done any direct business in Texas and had never done any other business in the United States.

> "Tokai-Seiki delivered millions of the lighters to Scripto with the understanding that Scripto would be the exclusive distributor for the United States and that Scripto would be selling the lighters to a customer with national retail outlets. There is nothing in this record to indicate that Tokai-Seiki attempted in any way to limit the states in which the lighters could be sold. To the contrary, *the record shows that Tokai-Seiki had every reason to believe that its product would be sold to a*

> *nationwide market, that is, in any or all states. Moreover, the record shows that Texas was one of the states in which the lighters were in fact marketed,* the distribution chain including a Texas wholesaler and a Texas retail store. *Given this distributorship arrangement, Tokai-Seiki's conduct in connection with Texas are such that it should reasonably anticipate being haled into court* in Texas." (616 F.2d at 199-200) (Emphasis supplied)

Similarly, in this case, Atwood had every reason to believe its product would be sold in any or all states, including Florida. By utilizing Ford's distribution network, Atwood "has made efforts to serve indirectly the market for its product" in Florida. *Oswalt* v. *Scripto,* 616 F.2d at 200. *See also Gray* v. *American Radiator Standard Sanitary Corp.,* 22 Ill. 2d 432, 176 Ne. 2d 761 (1961) (where component part is sold in contemplation of use in Illinois, Illinois court have *in personam* jurisdiction).

Atwood's position is apparently that it is unfair to require it to defend an action in Florida, or in any other state in which its product causes injuries, simply because Atwood does not do business or ship its product directly to any states other than Illinois and Michigan. If Atwoods' position were adopted, it would force any individual purchaser injured by Atwood's defective products to bring an action in Illinois or Michigan. The unjustified burden this would place upon injured consumers is apparent. Atwood, knowing that its products will be used in any and all states, cannot in fairness be allowed to compel persons injured by its product to litigate in a far-away forum.

The fact that the instant controversy arises in the context of a third party action is of no significance. The

crucial fact is that Atwood distributes its products to Florida and can therefore expect to be sued in Florida. The burden upon it is no greater simply because Ford Motor Company, subrogated to the rights of the injured Florida resident, is now the nominal plaintiff. The legal principles involved, and their application, would be identical if Mrs. Westerling had elected to bring an action directly against Atwood. It is mere happenstance that the issue of the constitutionality of this provision of Florida's long-arm statute comes before this Court in this posture.

The simple fact is that Florida, and not Illinois or Michigan, is the most appropriate location for this litigation. The only contact with the state of Illinois has with this litigation is that Atwood is incorporated there and the defective product may have been manufactured there. Michigan is merely the location of some of Ford's activities, and perhaps the state in which the vehicle was manufactured.

Florida's interest in this case is far more substantial. The injured person resided in the state of Florida at the time of the accident; she and her husband purchased the vehicle in Florida; she was injured and received all of her medical treatment in Florida; all witnesses to the accident resided in Florida; and numerous depositions were taken in Florida. To move the litigation to Illinois or Michigan at this time would serve no purpose except to burden the courts of another state with a controversy in which they have little interest and which they are relatively ill-equipped to handle.

The appeal should be dismissed for want to a substantial federal question. In the alternative, the decision of the Florida Supreme Court is clearly correct, and should be affirmed.

Respectfully submitted,

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